

MEMORANDUM OF LAW

DATE: March 24, 1989

TO: Rick Simon, Program Director, REGY
FROM: City Attorney
SUBJECT: Liability for Youth Participating in Career
Exploration

In a memorandum dated February 10, 1989, you asked this office for an opinion concerning whether youths participating in REGY's Career Exploration Program are covered by workers' compensation and if they are not, who is responsible if one of the participants is injured while working in the program.

29 U.S.C.S. section 1553(a)(1)(3) addresses the issue of workers' compensation in the Job Training Partnership Act. It reads, in pertinent part:

To the extent that a State workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available with respect to injuries suffered by participants. To the extent that such law is not applicable, each recipient of funds under this Act shall secure insurance coverage for injuries suffered by such participants, in accordance with regulations prescribed by the Secretary.

Under the statute, REGY, being the recipient agency, is required to provide workers' compensation for all participants in its program, whether paid or unpaid.

On March 20, 1989, I contacted Zame Crocker at Fremont Compensation Insurance Company, REGY's workers' compensation carrier. She indicated that the unpaid workers in the REGY program are covered by the existing policy. The workers in the program receive training in exchange for their labor. Fremont Compensation has determined that the training is valid consideration for work performed by the program participants.

This policy comports with case law which indicates that "It has long been a rule that for purposes of worker's compensation the consideration or compensation for an employment contract need not be in the strict form of wages or money." *Barragan v. Workers' Comp. Appeals Bd.*, 195 Cal.App.3d 637 (1987). More specifically, the courts have said "The consideration for the agreement of employment may be represented by money paid for services or it

may consist of valuable instructions rendered to qualify the pupil as a skilled artisan or tradesman." Union Lumber Co. v. Indus. Acc. Com., 12 Cal.App.2d 588, 594 (1936) (emphasis added).

Assuming REGY has met the company requirements of Fremont Compensation, REGY has complied with the statute requirements of providing workers' compensation for the participants in the Career Exploration Program.

There are two specific company requirements with which REGY must comply. First, the participants in the program must have valid work permits. If this has not been a requirement up to this point, I recommend that in the future work permits be a prerequisite to participation in the Career Exploration Program.

Second, Ms. Crocker indicates that policy premiums are based on the number of hours of participation. Therefore, if you are currently reporting only the work hours of paid participants in computing coverage limits, documents must be reviewed and changes made so that unpaid hours are also considered in determining the amount of coverage to be obtained.

Assuming these two requirements are being met, the participants in the career exploration program are covered by your current workers' compensation policy. If these requirements have been overlooked, any deficiency should be rectified at once to avoid gaps in coverage.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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